

**Chapter 335.****SIGNIFICANT WILDLIFE HABITAT**

**SUMMARY:** These rules outline requirements associated with a Natural Resources Protection Act permit for an activity impacting significant wildlife habitat.

- 1. Applicability.** This chapter applies to an activity that takes place in, on, or over a significant wildlife habitat, or adjacent to a significant wildlife habitat contained within a freshwater wetland, and requires approval from the department pursuant to the Natural Resources Protection Act (NRPA), 38 M.R.S.A. §§ 480-A et. seq. This chapter applies to an application for an individual permit under the NRPA and describes basic standards for an activity affecting a significant wildlife habitat.

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**NOTE:** If a significant wildlife habitat contains a coastal wetland, great pond, or freshwater wetland, the applicant is also required to comply with Chapter 310, Wetland Protection.

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- 2. Definitions.** As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

The terms "freshwater wetland" and "significant wildlife habitat" have the same meaning as defined in the NRPA in 38 M.R.S.A. § 480-B.

- A. Activity.** Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials, draining or otherwise dewatering; filling or any construction, repair or alteration of any permanent structure in, on or over a significant wildlife habitat, or adjacent to a significant wildlife habitat contained within a freshwater wetland, as applicable under the NRPA.

On a case-by-case basis as determined by the department, the term "activity" may not include:

- (1) The disturbance of very little soil through an activity such as installing a fence post or planting shrubs by hand;
- (2) The addition of a minor feature, such as a bench or hand rail, to a structure; or
- (3) The construction, repair or alteration of a small structure with minimal impact such as a nesting box, pasture fence, or staff gauge.

- B. Adjacent to a significant wildlife habitat.** The area within 100 feet, measured horizontally, of the edge of a significant wildlife habitat contained within a freshwater wetland.

- C. Existing development area.** The area of property altered including, but not limited to, buildings, driveways, parking areas, wastewater disposal systems, lawns and other non-native vegetation, as of the effective date of this chapter.

- D. Subject wildlife.** Wildlife species for which an area has been designated as significant wildlife habitat.

### 3. General standards applicable to all activities

- A. Avoidance.** No activity that would degrade the significant wildlife habitat, disturb the subject wildlife, or affect the continued use of the significant wildlife habitat by the subject wildlife, either during or as a result of the activity, is permitted if there is a practicable alternative to the project that would be less damaging to the environment.
- B. Minimal alteration.** Alteration of the habitat and disturbance of subject wildlife must be kept to the minimum amount necessary by, among other methods, minimizing the size of the alteration, the duration of the activity, and its proximity to the significant wildlife habitat and subject wildlife. Temporary structures must be used instead of permanent structures wherever possible and more protective of the significant wildlife habitat or subject wildlife.
- C. No unreasonable impact.** Even if the project has no practicable alternative, and the applicant has minimized the proposed alteration as much as possible, the application will be denied if the activity will have an unreasonable impact on protected natural resources or the subject wildlife. "Unreasonable impact" means that one or more of the standards of the NRPA at 38 M.R.S.A. § 480-D will not be met. In making this determination, the department considers the area of the significant wildlife habitat affected by the activity, including areas beyond the physical boundaries of the project and the cumulative effects of frequent minor alterations of significant wildlife habitats.

In order to meet the "harm to habitats; fisheries" standard at 38 M.R.S.A. § 480-D(3), the following requirements must be met.

- (1) Unreasonable degradation, disturbance, or effect. The activity may not unreasonably degrade the significant wildlife habitat, unreasonably disturb subject wildlife, or unreasonably affect the continued use of the site by the subject wildlife.
  - (2) Timing. Construction activities must be done at a time when impacts on protected habitats, wildlife, fisheries and aquatic life will be minimized, such as outside of any critical nesting periods or similar critical periods, depending on the specific habitat and species. For example, an activity that could potentially cause sedimentation, such as excavation, may not be carried out during times of the year when fish are spawning. This requirement must be met unless the work can only practically be completed at that time, and it is determined by the department that the impacts to the protected natural resource will be short term, and will not result in permanent harm to fish, wildlife, or marine resources.
- 4. Pre-application and pre-submission meetings.** The pre-application meeting between the applicant and the department is an opportunity for the applicant to determine the statutory and regulatory requirements that apply to a specific project. The purpose of this meeting is to identify issues, processing times, fees and the types of information and documentation necessary for the department to properly assess the project.

The pre-submission meeting is an opportunity to review the assembled application to ensure that the necessary types of information have been included prior to filing the application.

- A. When required.** A pre-application and pre-submission meeting is required for any activity that is proposed in, on, over, or adjacent to significant wildlife habitat and requires an individual permit under the NRPA.

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**NOTE:** Activities requiring an NRPA permit are described at 38 M.R.S.A. § 480-C. Exemptions are described at 38 M.R.S.A. § 480-Q.

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- B. Submissions and scheduling.** The following information and items must be submitted prior to scheduling a pre-application meeting with the department.

- (1) Sketch plan. A sketch plan of the site showing the proposed activity, adjacent structures and features, property lines, and the significant wildlife habitat, with all distances and dimensions.
- (2) Location map. A map showing the location of the proposed project site in relation to major roads and landmarks.
- (3) Description of project. A brief description of the project including its dimensions.
- (4) Description of significant wildlife habitat. A description of the significant wildlife habitat to be altered.
- (5) Description of probable impacts. A description of probable impacts of the project on the subject wildlife, significant wildlife habitat, and any other protected natural resources.
- (6) Photographs. Photographs of the project area showing its characteristics.

- 5. Submission requirements.** The applicant shall submit evidence that affirmatively demonstrates that the activity will meet the standards of the NRPA and this chapter including, but not limited to, the information listed below. Because of the site-specific nature of activities and potential impacts to significant wildlife habitat, the department may, on a case-by-case basis, require more or less information than specified in this section, in order to determine whether the standards will be met. Failure to provide any requested information necessary for the processing of the application may result in the application not being accepted as complete for processing or denial of the application.

- A. Report addressing avoidance.** A report analyzing whether a practicable alternative to the alteration exists that would be less damaging to the environment. The report must address why the project cannot avoid or lessen impacts to the significant wildlife habitat by utilizing, managing or expanding one or more other sites; reducing the size, scope, configuration or density of the proposed project; developing alternative project designs; or by some other means.

- B. Site description and impact report.** A report addressing the following.

- (1) Description of activity. A narrative including the following:
  - (a) The dimensions of the project, the project site, and the area of the significant wildlife habitat to be altered;
  - (b) The impacts of the project on subject wildlife and protected natural resources; and

- (c) The nature and timing of procedures intended to reduce the impacts of the activity on subject wildlife and protected natural resources.
  - (2) Location map. A map showing the location of the proposed project site in relation to major roads and landmarks.
  - (3) Drawings (Sketch plan). Scale drawings (overhead and side views) showing dimensions of the project, the project site, and the area of the significant wildlife habitat to be altered.
  - (4) Description of site characteristics. A description of existing significant wildlife habitat characteristics.
  - (5) Photographs. Photographs of the project area, showing its characteristics.
  - (6) Description of project construction. A description of how the project will be constructed with information on how the project site will be accessed, and any erosion control measures proposed to be used.
- 6. Terms and conditions.** The department may, as a term or condition of approval, establish any reasonable requirement to ensure that the proposed activity will meet the standards of Title 38 M.R.S.A. § 480-D and comply with this chapter.
- 7. Severability.** Should any provision of these rules be declared invalid or ineffective by court decision, the decision shall not invalidate any other provision of these rules.
- 8. Seabird nesting island.** Seabird nesting islands are significant wildlife habitats. A project impacting a seabird nesting island must meet the standards of this chapter.
- A. Definitions.** As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.
- (1) Seabird. Colonial nesting waterbirds including Leach's Storm-petrel, Great Cormorant, Double-crested Cormorant, Laughing Gull, Herring Gull, Great Black-backed Gull, Common Tern, Arctic Tern, Roseate Tern, Razorbill, Black Guillemot, Atlantic Puffin, and Common Eider.
  - (2) Seabird nesting island. (a) An island, ledge, or portion thereof in tidal waters that has documentation of 25 or more: nests or seabirds, adult seabirds displaced from nests, or in combination (single species or aggregate of different species) in any nesting season during, or since, 1976; provided that the island, ledge, or portion thereof continues to have suitable nesting habitat. (b) An island, ledge, or portion thereof in tidal waters that has documentation of one or more nests of a seabird that is a Maine endangered or threatened species in any year during, or since, 1976 provided that the island, ledge, or portion thereof, continues to have suitable nesting habitat.

- B. Maps.** Seabird nesting islands are delineated on 7.5 minute U.S. Coast and Geodetic Survey maps developed by the Maine Department of Inland Fisheries and Wildlife. The maps are identified as Significant Wildlife Habitat Seabird Nesting Island Maps #1-55, January 1998.

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**NOTE:** The criteria used to define seabird nesting islands was developed by the Maine Department of Inland Fisheries and Wildlife (09-137 CMR 10.02(F)). Maps of seabird nesting islands are on file at the Department of Environmental Protection's offices in Portland, Augusta, and Bangor, and in town offices.

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- C. Removal or displacement of vegetation.** For seabird nesting islands, removal or displacement of vegetation does not include:

- (1) Gardening, lawn cutting, removal of fallen vegetation, and tree and shrub pruning within an existing development area as of the effective date of this chapter.
- (2) Removal of an entire tree when it threatens a building.

- D. Seabird critical nesting period.** The seabird critical nesting period is from April 15 to August 31 each year unless otherwise approved by the Maine Department of Inland Fisheries and Wildlife.

AUTHORITY: 38 M.R.S.A. §§ 341-D and 480-A et seq.

EFFECTIVE DATE: September 15, 1998